

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

VALERIE MCDONALD,  
Plaintiff,

vs.

NAVY FEDERAL FINANCIAL GROUP,  
LLC, dba NAVY FEDERAL CREDIT  
UNION,

Defendant.

Case No. 2:23-CV-01325-ART-EJY

ORDER

(ECF Nos. 39, 43, 44)

Before the Court are Defendant Navy Federal Credit Union's motion for judgment on the pleadings or alternatively for summary judgment (ECF Nos. 43, 44), and Plaintiff Valerie McDonald's motion to strike (ECF No. 39). For the reasons discussed below, the Court grants Defendant's motion for judgment on the pleadings and denies Plaintiff's motion to strike as moot.

**I. Background**

The following relevant facts are alleged in Plaintiff's complaint: Plaintiff has several accounts with Navy Federal: two credit cards, a checking account, and a savings account. (ECF No. 14 at 5-6.) She made regular payments on both credit cards until around January 2022. (*Id.* at 6.) Plaintiff alleges that she then requested accounting records for her credit card accounts "to no avail." (*Id.*) Defendant then closed her credit card accounts, and on multiple occasions transferred funds from her checking account towards the balances of her credit card accounts. (*Id.*) Plaintiff did not provide authorization for these transfers. (*Id.*) On January 1, 2022, she was told by a Navy Federal representative that they would continue to make these withdrawals until the debt was satisfied. (*Id.*) In July of 2022, Defendant refunded a security deposit she had put down on one of her credit accounts to her savings account, but then withdrew funds from her savings account and applied it the outstanding balance of her credit card. (*Id.*)

Plaintiff filed this lawsuit on August 25, 2023, bringing several causes of action against Defendant. (ECF No. 1.) Plaintiff then amended her complaint twice. (ECF Nos. 5, 14.) The Court then dismissed all of Plaintiff's claims except for her claim under the Electronic Funds Transfer Act ("EFTA"). (ECF Nos. 15, 28.) This claim alleges that Defendant violated several provisions of the EFTA by making electronic transfers without her written authorization.

## **II. Motion for Judgment on the Pleadings<sup>1</sup>**

### **A. Legal Standard**

A party may move for judgment on the pleadings "[a]fter the pleadings are closed—but early enough not to delay trial[.]" Fed. R. Civ. P. 12(c). A motion for judgment on the pleadings is "functionally identical" to a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Dworkin v. Hustler Mag. Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). "When considering a motion for judgment on the pleadings, the court must accept as true all material allegations in the complaint and view them in the light most favorable to the plaintiff." *NL Industries v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986). Judgment on the pleadings is only proper "when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law." *Enron Oil Trading & Transp. v. Walbrook Ins. Co., Ltd.*, 132 F.3d 526, 529 (9th Cir. 1997) (citing *George v. Pacific-CSC Work Furlough*, 91 F.3d 1227, 1229 (9th Cir. 1996), *cert. denied*, 519 U.S. 1081 (1997)). The Court should only dismiss the case if "it appears beyond a doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Sun Savings and Loan Ass'n v. Dierdorff*, 825 F.2d 187, 191 (9th Cir. 1987).

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<sup>1</sup> Because the Court finds that Defendant is entitled to judgment on the pleadings, the Court does not consider Defendant's alternative argument for summary judgment.

## **A. Analysis**

### **1. Statute of Limitations**

Defendant first argues that Plaintiff's claim is barred by the statute of limitations. Defendant avers that because Plaintiff's complaint references transfers made between January and July 2022, her action filed in August of 2023 is beyond the 1-year statute of limitations for EFTA claims. 15 U.S.C. § 1693m(g).

Plaintiff's complaint did not cite the dates of the transfers she alleges violated the EFTA, other than the July 19, 2022 transfer from her savings account. Plaintiff's opposition alleges that the transfers are ongoing. Because no discovery has been conducted in this case, the Court cannot determine that all of the transfers alleged in the complaint occurred more than one year prior to the complaint being filed. The Court therefore denies judgment on the pleadings on this ground.

### **2. Electronic Funds Transfer Act**

Plaintiff relies on several provisions of the EFTA. 15 U.S.C. § 1693e(a) requires that any preauthorized electronic fund transfer from a consumer's account be authorized by the consumer in writing. A "preauthorized electronic fund transfer" is "an electronic fund transfer authorized in advance to recur at substantially regular intervals." 15 U.S.C. § 1693a(10). Plaintiff's complaint alleges that the transfers from her bank accounts to her credit card account were made without her written authorization and are thus in violation of the EFTA.

Defendant argues that it is entitled to judgment on the pleadings because the EFTA does not prohibit the type of transfers Plaintiff complains of. Specifically, Defendant argues that (1) the transfers at issue are expressly excepted by the act because they were made pursuant to an agreement between Plaintiff and Defendant, (2) the transfers are not prohibited because they are not "recurring" at "substantially regular intervals," and (3) the transfers are excepted

1 by the act because they were initiated by Defendant itself. The Court finds that  
2 Defendant is entitled to judgment on the pleadings as to the first ground and  
3 does not address Defendant's other arguments.

4 Defendant argues that the transfers at issue fall under the exception under  
5 12 C.F.R. 205.3(c)(5), which states that "[t]he term electronic fund transfer does  
6 not include . . . [a]ny transfer of funds under an agreement between a consumer  
7 and a financial institution which provides that the institution will initiate  
8 individual transfers without a specific request from the consumer." The Court  
9 agrees. Defendants attached to their motion the language of the agreement which  
10 was in place during 2022.<sup>2</sup> It states:

11 If approved for a Navy Federal (NFCU) Credit Card, use of the card  
12 demonstrates my/our consent to all its terms and conditions,  
13 including the Security Interest Specific for Credit Cards provision,  
14 which reads: I/We acknowledge and pledge, specifically as a  
15 condition of my/our use of the credit card, that I/we have voluntarily  
16 granted NFCU a security interest in all of my/our individual and joint  
share accounts at NFCU. If my/our credit card loan becomes  
delinquent, this security interest may be used without further notice  
to pay all or part of such delinquency.

17 (ECF No. 43-1 at 18.) This agreement between Plaintiff and Defendant authorizes  
18 Defendant to use the security interest "without further notice" to pay the  
19 delinquency on the credit account. *Id.* Thus, the transfers pursuant to that  
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21 <sup>2</sup> Plaintiff's third amended complaint attached a credit card agreement and  
22 quoted this section of it regarding a security interest. (ECF No. 14 at 7-8, 67.)  
23 However, the agreement she attaches and quotes in her complaint is dated 2003.  
24 Defendant provided the language of the agreement in place in 2022, at the time  
25 of the violations alleged in the complaint, with its motion. (ECF No. 43-1.) As  
26 noted by Defendant, the relevant language is nearly identical. Plaintiff also cites  
27 the 2022 language in her opposition. (ECF No. 48 at 4.) Because this agreement  
28 was referenced in the complaint and an earlier version of it was attached, the  
Court may consider it without converting this into a motion for summary  
judgment. Under the doctrine of incorporation by reference, "a court may  
consider a writing referenced in a complaint but not explicitly incorporated  
therein if the complaint relies on the document and its authenticity is  
unquestioned." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007).

1 agreement, while literally electronic transfers, are not “electronic funds transfers”  
2 for the purposes of the EFTA. *See Okocha v. HSBC Bank USA, N.A.*, No. 08  
3 CIV.8650(MHP), 2010 WL 5122614, at \*2-3 (S.D.N.Y. Dec. 14, 2010) (finding that  
4 transfers from one bank account to cover an amount due on another bank  
5 account were not “electronic fund transfers” for the purposes of the EFTA because  
6 agreement provided for such transfers). Because of this, written permission from  
7 Plaintiff was not required for Defendant to make these transfers.

8 For this reason, Plaintiff has failed to allege facts which could establish a  
9 right to relief under the EFTA. The Court grants Defendant’s motion for judgment  
10 on the pleadings. Because the Court grants judgment on the pleadings in favor  
11 of Defendant, the Court will also deny as moot Plaintiff’s motion to strike  
12 Defendant’s affirmative defenses.

### 13 **III. Leave to Amend**

14 In her opposition, Plaintiff alleges that Defendant has continued to transfer  
15 funds from her account, and she requests leave to amend to address the “ongoing  
16 violations by the Defendant.” (ECF No. 48 at 2, 7.) If Plaintiff is seeking leave to  
17 amend her complaint, the Court denies this request because it would be futile.  
18 *Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522, 532 (9th Cir. 2008) (leave to  
19 amend may be denied where amendment would be futile). As with the  
20 transactions that were plead in the complaint, discussed above, the EFTA would  
21 not apply to these additional transfers.

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**IV. Conclusion**

It is therefore ordered that Defendant's motion for judgment on the pleadings, or alternatively for summary judgment (ECF Nos. 43, 44) is GRANTED.

It is further ordered that Plaintiff's motion to strike Defendant's affirmative defenses (ECF No. 39) is DENIED AS MOOT.

It is further ordered that the Clerk of the Court is kindly instructed to ENTER JUDGMENT accordingly in favor of Defendant and CLOSE this case.

Dated this 15<sup>th</sup> day of July 2025.

A handwritten signature in black ink, appearing to read "Anne R. Traum", is written over a horizontal line.

ANNE R. TRAUM  
UNITED STATES DISTRICT JUDGE